

Appl. No. : 10/663,381  
Filed : September 15, 2003

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## SUMMARY OF INTERVIEW

### Location and Date

Telephone interviews on November 8, 2006 and December 29, 2006.

### Participants

Examiner Ali and Applicants' attorney, Scott Murray.

### Exhibits and/or Demonstrations

None.

### Identification of Claims Discussed

N/A.

### Identification of Prior Art Discussed

USPN 6,932,781

JP 2003-068426

### Proposed Amendments

None.

### Principal Arguments and Other Matters

In the November 8<sup>th</sup> interview, Applicants' attorney noted that the priority date of 6,932,781 does not overcome Applicant's earliest priority date.

In the December 29 interview, Applicants' attorney noted that the reference included in the November 29, 2006 Final Office action is simply a certified copy of JP 2003-068426, which was filed in Japan on March, 13, 2003 (i.e., the "Date of Application"). This document does not indicate that the application was *published* on March 13, 2003.

### Results of Interview

In the November 8<sup>th</sup> interview, the Examiner indicated that a Supplemental Action would be issued and would use Itoi (JP 2003-068426) for the ground of rejection..

In the December 29<sup>th</sup> interview, it was agreed that the publication date accorded to JP 2003-068426 in the November 29, 2006 Final Office action is incorrect.

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### REMARKS

#### Status of Claims

Claims 1-13 and 15-28 are pending in the application. Claim 7 has been amended. Applicant notes with appreciation that the Examiner has indicated that Claims 7 and 10-13 are in condition for allowance and that Claims 26-28 would be in condition for allowance if rewritten into independent form.

#### Interview

Applicants thank Examiner for discussing the cited Japanese Application (JP 2003-068426) in a telephone interview on December 29, 2006.

#### JP 2003-068426

The copy of JP2003-068426 included in the November 29, 2006 Final Office action is simply a certified copy of Japanese Patent Application No. JP 2003-068426, which was filed in Japan on March 13, 2003 (i.e., the indicated "Date of Application"). This document does not indicate that the application was *published* on March 13, 2003.

Prior art under 35 U.S.C. § 102(a) includes subject matter that has been "patented or described in a **printed publication** in this or a foreign country, before the invention thereof by the applicant for a patent." (emphasis added) For "35 U.S.C. 102(a) to apply, the reference must have a **publication date** earlier in time than the effective filing date of the application." M.P.E.P. 706.02(a) (emphasis added). A review of the status of JP2003-068426 indicates that it was published on September 24, 2004 as Japanese patent application publication number 2004-261531, and has not yet issued as a patent in Japan. Thus, the **publication date** of this cited art is **after** the filing date of the present application. Thus, JP2003-068426 does not qualify as prior art under 35 U.S.C. § 102(a).

In addition, the JP2003-068426 cannot be used to reject the pending claims under 35 U.S.C. § 102(e). The reference cited by Examiner is neither a patent, nor a printed publication; instead it is a foreign patent application filed on March 13, 2003. As noted in M.P.E.P. 706.02(f)(1), a potential 102(e) reference "must be a U.S. patent, a U.S. application publication (35 U.S.C. 122(b)) or a WIPO publication of an international application under PCT Article 21(2) in order to apply the reference under 35 U.S.C. 102(e)." Moreover, "[f]oreign applications' filing dates that are claimed (via 35 U.S.C. 119(a)-(d), (f), or 365(a) or (b)) in applications, which

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have been published as U.S. or WIPO application publications or patented in the U.S., may not be used as 35 U.S.C. 102(e) dates for prior art purposes." M.P.E.P. 706.02(f)(1) (emphasis added). Thus, JP2003-068426 cannot be used to reject the pending claims prior art under 35 U.S.C. § 102(e).

#### **Claim Rejections**

The Examiner rejected Claims 1-4, 8 and 15-18 under 35 U.S.C. § 102(a) as being anticipated by Japanese Patent Application 2003-068426 to Itoi. The Examiner rejected Claims 5, 6, 18-20, 23 and 25 under 35 U.S.C. § 103(a) as being unpatentable over Itoi in view of U.S. Patent No. 6,659,971 to Gaylord and further in view of U.S. Patent No. 4,598,701 to Schaefer. The Examiner rejected Claims 9, 21 and 24 under 35 U.S.C. § 103(a) as being unpatentable over Itoi in view of U.S. Patent No. 5,407,420 to Bastyr.

As set forth above, Applicants respectfully submit that Itoi is not prior art to the present application. For at least this reason, Applicants submit that the rejections of these claims is improper and Applicant respectfully requests that they be withdrawn.

#### **Claim Objections**

The Examiner objected to Claim 7 and required correction of certain informalities. Applicants have amended Claim 7 as suggested by Examiner. Accordingly, Applicants request that this claim objection be withdrawn.

#### **Conclusion**

In view of the above remarks, Applicants request that Examiner withdraw the claim rejections and objections raised in the Office Action. Further, Applicants submit that this application is in condition for allowance and solicit a Notice of Allowance thereon. If there remains any unresolved issued, Applicants respectfully request the Examiner to contact Applicants's representative at the number provided below. Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

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Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 10<sup>RNN</sup> 12-29-06

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AMEND

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